Applicant Arbitration Request

Request for Arbitration of Public Assistance Claims

Bay St. Louis – Waveland School District
201 Carroll Avenue
Bay St. Louis, Mississippi 39520

September 30, 2009

DIRECT INSPIRE LAUNCH

BAY-WAVELAND SCHOOL DISTRICT

September 30, 2009

VIA FEDERAL EXPRESS

Civilian Board of Contract Appeals
Sixth Floor
1800 M Street, NW
Washington, D.C. 20036

Re: Request for Arbitration pursuant to 44 CFR § 206.209
FEMA-1604-D -MS - Bay St. Louis-Waveland School District,
#045-00E4A-00

Dear Sirs:

On or about August 3, 2009, the Bay St. Louis-Waveland School District (alternately, "Subgrantee" and "BWSD") was notified by the Mississippi Emergency Management Agency (Grantee) that the Federal Emergency Management Agency (FEMA) had completed its review of additional scope of work the school district had requested under the Public Assistance Program for damages caused by Hurricane Katrina. Letter from Thomas M. Womack to T. J. Burleson (August 3, 2009)(Exhibit A). FEMA denied the bulk of the Subgrantee's request for repairs to various BWSD school buildings, approving only a minimal amount of the work requested. *Id.* at enclosure.

Under Federal law BWSD is entitled to appeal FEMA's decision. *See* 44 CFR § 206.206. However, the Subgrantee desires instead that this dispute be resolved by arbitration pursuant to 44 CFR § 206.209. In support of this request, BWSD respectfully asks that the following information and referenced exhibits be considered.

Background

On August 29, 2005, Hurricane Katrina struck the Mississippi Gulf Coast, causing high winds, heavy rains, and flooding. This massive hurricane produced consistent wind speeds of 140 mph and a storm surge of 24 to 24.5 feet above sea level at the BWSD campuses. *See* Letter from J. Sobel and S. Wistar of Accuweather to K. Stasny, p. 18 (Feb. 28, 2007)(Exhibit B). These conditions caused extensive damage throughout the campuses of the Bay St. Louis-Waveland School District, located only a short distance from the Bay of St. Louis and the Mississippi Sound. *See* Report of Orion Engineering, photos of damage (Exhibit C); *see also* Google® map of BWSD campuses (Exhibit D).

It is generally accepted that Hurricane Katrina is one of the worst natural disasters in the history of the United States. Accuweather Rpt. at 3. The unusually devastating nature of this storm has been attributed to the fact that it was larger than most and was particularly slow moving. *Id.* at 5. A leading private weather service, Accuweather®, developed a number of

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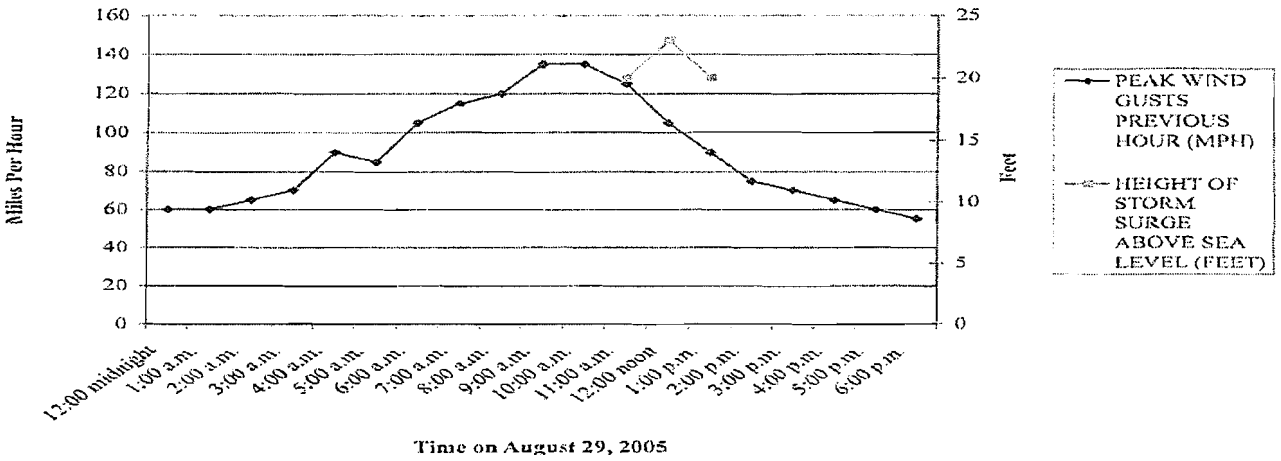
charts and tables to illustrate the extremity of the conditions that affected BWSD. This data shows that the BWSD campuses were exposed to hurricane-force winds for an extended period of time. For example, although Bay-Waveland Middle School and Bay High were subjected to winds of almost 140 mph for at least an hour, the buildings on these campuses were also subjected to 60+ mph winds continuously *for almost 18 hours*:

Wind/Water Timeline for 750 Blue Meadow Road and New Middle School at 600 Pine Street, both in Bay St. Louis, MS



Id. at App.

BWSD submitted an application for funding under FEMA's Public Assistance Program to enable the district to repair and restore its severely damaged school buildings. This assistance is particularly important to the Subgrantee, a school district facing significant budget cuts and still struggling to rebuild from Hurricane Katrina. *See* Phoebe Judge, *A Gulf Coast School District Still Trying to Rebuild from Katrina Deals With Budget Cuts*, Mississippi Public Radio Online, February 10, 2009 (Exhibit S). FEMA prepared individual Project Worksheet Reports (alternately, "PWs") for various structures and authorized funding for certain repairs. The Subgrantee's request for funding to repair significant damages to roofs, windows, and siding at a number of campuses, denied by FEMA, is the subject of this request for arbitration.

The Stafford Act

The principal legal authority for providing assistance to state and local governments in response to catastrophic events is the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). *See* 42 U.S.C. § 5121*et seq.* One of the programs authorized under the Stafford Act, section 406, is the Public Assistance ("PA") Program, which provides for the cost of repairing, restoring, reconstructing, or replacing public facilities damaged by a major disaster. *See* 42 U.S.C. § 7172.

Under the PA Program repairs must be made on the basis of the design of facilities "as they existed immediately prior to the disaster. . . ." 44 CFR § 206.226. A facility is considered

"repairable" if disaster damages do not exceed 50 percent of the cost of replacing the facility to its predisaster condition, "and it is feasible to repair the facility so that it can perform the function for which it was being used *as well as it did immediately prior to the disaster.*" *Id.* at (d)(1) (emphasis added). If the facility is not repairable in accordance with this standard the facility may be replaced. *Id.* at (d)(2).

Claims at Issue

The PA claims at issue involve three BWSD schools: Bay High School, Bay–Waveland Middle School, and Waveland Elementary. Copies of the project worksheets in question are included in a separate volume of exhibits, labeled as Exhibit R. Not all of the PWs at issue contain comments by FEMA. A more comprehensive record of the scope of work BWSD submitted to FEMA for consideration under the PA Program is found in a spreadsheet prepared by the Subgrantee, included within this request as Exhibit Q. This document contains descriptions of the items of work requested, PW numbers, cost estimates, and comments supplied by technical representatives of the Mississippi Emergency Management Agency (MEMA).[1] *Id.*

The items BWSD contends are wrongly missing from the scope of work authorized by FEMA can be divided into three categories: roofs, windows, and siding.

Type of Damage	Estimated Cost to Repair	Profit, Overhead, Taxes, and A&E Fees[2]	Total
Roofs	$4,329,703	$1,531,807.14	$5,861,510.14
Windows	$518,902	$183,582.52	$702,484.52
Siding	$523,779.60	$185,308.17	$709,087.77

1. Damage to Roofs at Bay High and Bay-Waveland Middle School

The Subgrantee's request for funding under the PA Program to replace the roofs at Bay High School and Bay-Waveland Middle School and FEMA's response can be summarized as follows:

Project Worksheets	Buildings	Estimate for Roofs	FEMA Allowance[3]
930	Middle School	$3,386,492	$12,630
9395	Bay High Math Classrooms	$459,795	0
9397	Bay High Social Studies Bldg.	$483,416	0
Subtotal		$4,329,703	$12,630

[1] Some cost estimates have been updated since this spreadsheet was prepared. The estimates cited in the body of this report are the latest figures available to the Subgrantee.

[2] This figure represents 10% overhead, 10% profit, 3.5% tax and 8.1% architectural & engineering fees, as generally allowed by FEMA.

[3] Cited figure includes demolition, materials, and labor - but does not include A&E fees. *See* Letter from T. M. Womack (enclosure) (Exhibit A).

See PWs 930, 9395, and 9397 (Exhibit R); *see also* attachment to Letter from T. M. Womack (Exhibit A) *and* Bay-Waveland Missing Scope of Work (Exhibit Q).

It is beyond dispute that the roofs of Bay-Waveland Middle School and Bay High School were subjected to hurricane force winds for an extended period of time. However, there is little evidence that FEMA gave serious consideration to this particular claim, considering only the visibly "damaged" portion of the roofs to be eligible:

> Only damaged portion of roofing is eligible. Applicant furnished sub contractor bid saying roof needed replacement due to stress on clips. No visible evidence of event of this damage.

PW 930 at 13; PW 9397 at16 (Exhibit R). The damage to these particular roofing systems was and is much more serious than patch repairs can accomplish.

As a result of continuing problems with leaks BWSD retained experts to examine the roofs on these particular buildings. Patrick Brady, one of those experts, has over 40 years of experience in the fields of general contracting and reconstruction of residential and commercial buildings. *See* Curriculum Vitae of Patrick Brady (Exhibit E). Of particular note is Mr. Brady's extensive experience as a participant and umpire in the resolution of property damage claims in the State of Texas. *Id.* Mr. Brady personally inspected the roofs in question and took numerous photographs of the damages at issue.

The Subgrantee also retained William Hoffman, Managing Partner of the Claims Consulting Group, to investigate and assess the damage to its schools. Mr. Hoffman's extensive experience in the fields of construction and claims adjusting brings additional and significant experience to bear on the projects at issue. *See* Curriculum Vitae of William Hoffman (Exhibit F). The roofing systems were also examined by John J. Campbell Co., Inc., a respected professional roofing company. *See* John J. Campbell Co., Inc. Report (Exhibit I).

A. Bay-Waveland Middle School (PW 930)

Patrick Brady and Bill Hoffman's examination of the Bay-Waveland Middle School, as documented by the included photographs, revealed a number of scrapes, scratches, and gouges that penetrated the protective baked enamel finish on the metal panels that form the outer surface of the roofs at the Middle School. *See* Patrick Brady Rpt.; photos 3-7, 14-17, 22-26, and 34-37(Exhibit G). These types of damages to the finish of metal roofing materials are of particular concern for the reason that such breaches are likely to result in accelerated corrosion (especially in the corrosive environment of a coastal community) that will ultimately shorten the life expectancy of the metal panel roofing system and create premature leaking. *Id.* at pp. 2-3.

In addition, evidence of significant stress to the metal panels caused by high wind conditions is clearly evident in a number of photos. *Id.* at photos 8-13, 18-19, 24-25, and 27-33. Mr. Brady's interview of BWSD staff members and his personal inspection revealed that the facility continues to suffer a significant number of water leaks from the roofs. Blistering, evident

in photos, beneath portions of the gymnasium roof are clear indications of moisture that has leaked into and is now trapped in the insulation. *Id.* at photos 40-50.

Mr. Hoffman noted in his report that roofs of this type are rated not to exceed wind speeds of 110 mph. William Hoffman Rpt. at 2 (Exhibit H). As shown previously, wind speeds at the Middle School reached at least 135 mph and exceeded 120 mph for at least three hours. Accuweather Rpt. at App.

Mr. Brady and Mr. Hoffman are of the opinion that this entire roofing system must be replaced in order for it to perform properly: "Based on our observations and the evidence and supporting documentation it is our opinion the entire roof on the Bay Waveland Middle School Building needs to be replaced." W. Hoffman Rpt. at 2.

The John J. Campbell Co., Inc., of Memphis, Tennessee, provided an estimate of the cost to replace the current roofing system. Campbell agreed with Mr. Brady's and Mr. Hoffman's assessment that the roofs were severely damaged by the storm and their structural and water-tight integrity "was lost due to high winds." John J. Campbell Co., Inc. Report (Exhibit I). Mr. Robert Goodall, Vice President of the Service Department, estimated that it would cost $3,386,492 for the replacement of the Middle School roof. *Id.*

B. Bay High School (PWs 9395 and 9397)

The damage to the roofs at Bay High School is similar in type and scope to that suffered at the Middle School. In particular, the metal roofing system over the two buildings in question, the Math wing and the Social Studies wing, shows significant signs of stress and damage to the metal finishes. *See* P. Brady Rpt. at photos 85-89 and 110-121 (Exhibit J). Mr. Hoffman's report also describes the type of damage the roofs at this campus sustained:

> The roofing system sustained extensive damage as a result of the high winds from Hurricane Katrina. The effect of those winds was to lift the roofing system and under the stress of those winds compromised the integrity of the roof panels. The extensive pressures caused damage to the lighter gauge metal roofing especially where the panels were fastened to clips designed to hold the panels in place. This lifting process caused breaks in the seals designed to keep the building waterproof. We again refer you to the reports submitted by Accuweather and Orion Engineering as well as the proposal submitted by John J. Campbell Co., Inc. indicating the evidence of hurricane force winds in excess of five hours, the lifting effect caused by those winds and the physical damage found by the inspection of Campbell and Orion.

W. Hoffman Rpt. at 2 (Exhibit H).

Mr. Brady's opinion is that this entire roofing system for these two buildings must be replaced in order for them to perform as they did immediately prior to the disaster. P. Brady Rpt. at 4. Bill Hoffman agrees with Mr. Brady's assessment: "Based on our inspections and

discussions with our experts, it is our opinion the roofs were damaged and compromised to the extent requiring replacement of the entire roofing system." W. Hoffman report at 3.

2. Damage to Windows at Waveland Elementary, Bay High, and Bay-Waveland Middle School

Like the roofs, the windows at the BWSD campuses were subjected to an extended period of hurricane-force winds. Although most of the windows, upon initial inspection, appeared to have survived the onslaught, serious and lasting damage to these units has become apparent with time. Teachers and staff, in particular, have noticed that the sound insulation qualities of the windows appear to have been compromised. *See* Collection of Letters (Exhibit T). The Subgrantee's request for funding to replace certain windows at Bay High School, Bay-Waveland Middle School, and Waveland Elementary School and FEMA's response can be summarized as follows:

Project Worksheets	Buildings	Estimate for Windows	FEMA Allowance
7803	Waveland Elementary – South Bldg.	$64,261	0
7807	Waveland Elementary – North Building	$37,741	0
930, 9307, 9316, 9368, 9395, 9397, 9427, 9681, 9682	Bay High and Bay-Waveland Middle School	$416,900	0
Subtotal		$518,902	$0

See Exhibit R; *see also* attachment to Letter from T. M. Womack (Exhibit A) *and* Bay-Waveland Missing Scope of Work (Exhibit Q).

Again, there is little evidence that FEMA took the Subgrantee's claims about the windows seriously. This *exact same statement* is incorporated into each of the PWs in question:

> Aluminum windows – no evidence of storm damage. The applicant furnished a report from a sub contractor stating windows were stressed by storm, weather stripping was damaged by storm and double pane (thermopane) seals were broken. No stress in windows was visible, weather stripping deterioration was not storm related and no damage to double pane seal was evident.

See, e.g., PW 930 at 13 (Exhibit R). Even a cursory inspection would have revealed a different story.

In the course of Patrick Brady's inspection of the BWSD campuses he was told by a number of staff members that the classroom windows in most buildings were prone to shake and rattle in their frames whenever typical winds associated with otherwise normal coastal rainstorms occurred. *See* P. Brady Bay High School Report at 3 (Exhibit J). Upon further inspection, Mr. Brady discovered at a number of buildings a consistent pattern of loose window sashes, loose glass, and corroded surfaces. *Id.* at photos 22-26 and 56-68.

Mr. Brady consulted with an experienced glass company, Lincoln Glass Company of Memphis, Tennessee, in an effort to determine whether the complaints that he received and the conditions of the windows he observed were related to Hurricane Katrina. Mr. Don Langston, President of Lincoln Glass, concluded that the insulated glass units were stressed due to high winds. This, in turn, caused seal failures, deterioration of weather stripping, and deterioration of component parts. *See* Lincoln Glass Co. Inc. Report (Exhibit K).

A. Bay-Waveland Middle School (PW 930)

Extreme wind velocity and pressure caused various types of damage to the windows at Bay Middle School. Seals on all the windows were compromised, a condition that allowed moisture to build up between the panes of glass. *See* W. Hoffman Rpt. at 2 (Exhibit L); *see also* P. Brady Middle School Report at photographs 51, 52, 53 and 54 (Exhibit G). In addition, tinted panes and aluminum frames were damaged by windblown sand and debris. *Id.* at photographs 56, 57 & 58.

B. Bay High School (PWs 9307, 9316, 9368, 9395, 9397, 9427, 9682, and 9681)

Like the other schools, intense wind velocity and pressure caused window seals to be compromised, allowing argon gas between the panes to escape, thereby allowing the buildup of moisture. *See* W. Hoffman Rpt. at 2. In addition, frames were subjected to windblown sand and debris causing scratches, penetrating the exterior finish of the frames and pitting the glass and frames. *See* P. Brady Bay High Report at photographs 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67 and 68 (Exhibit J).

C. Waveland Elementary School (PWs 7803 and 7807)

Intense wind velocity and pressure caused the seals on all the windows to be compromised at this campus also. This condition is readily apparent as the collection of moisture between panes of glass. *See* W. Hoffman Report at 3; *see also* P. Brady Waveland Elementary Report at photographs 25, 26 & 27 (Exhibit M).

3. Damage to Siding at Bay High School

Many of the Bay High buildings are clad with panels of metal siding. A large number of these panels were damaged by the sheer force of Katrina's winds, as well as flying debris.

Damage to the siding is apparent on a number of photographs taken by the BWSD consultants. For example, photos taken by Patrick Brady in 2007 clearly show panels that are dented, gouged, and loosened. *See, e.g.,* P. Brady Bay High Report at photographs 3-5, 27-29, 32-39, 42-55, 72-78, 80-89, 105-109 and 122-141 (Exhibit J).

FEMA's remedy for this condition is the limited replacement of certain panels. *See* attachment to Letter from T. M. Womack (Exhibit A). However, BWSD's experts have opined that it is not practical or economical to repair the siding in this fashion since the manufacturers are unknown, panel dimensions and fastening systems vary, and finishes would not match. Letter from Patrick Brady to William Hoffman (September 29, 2009) (Exhibit N). Further, even if panels could be reproduced on site, the new baked enamel finish would have a different oxidation rate, resulting in a varying appearance over time. *Id.* FEMA's proposal does not comply with Federal regulations because these repairs would not enable the siding to perform the function for which it was being used "as well as it did immediately prior to the disaster." 44 CFR § 206.226(d)(1).

FEMA's proposal and the Subgrantee's estimate for repair of Bay High School's siding are as follows:

Project Worksheets	Buildings	Estimate for Siding	FEMA Allowance[4]
9305	Bay High - Auditorium	$95,847.06	$12,708
9307	Bay High - Gymnasium	$252,315.33	$12,000
9397	Bay High - Social Studies Bldg.	$47,923.53	$4,911
9395	Bay High – Math Bldg.	$86,016.59	$3,274
9682	Bay High – Fine Arts/Band Bldg.	$41,677.09	$4,502
Subtotal		$523,779.60	$37,395

See Exhibit R; *see also* attachment to Letter from T. M. Womack (Exhibit A) *and* Bay-Waveland Missing Scope of Work (Exhibit Q). Patrick Brady's report, including estimates he received for replacement of the siding, is included within Exhibit N.

[4] Figure includes demolition, furnishing and installation of panels, painting, and scaffolding - but does not include A&E fees. *See* Letter from T. M. Womack (enclosure) (Exhibit A).

Summary and Conclusion

The Bay-Waveland School District lies directly in the middle of the area in which the eye of Hurricane Katrina made its landfall on August 29, 2005. It has been over four years since the storm, but recovery continues at a slow pace. While many of the damages to the school district's buildings have been repaired, less obvious problems remain. This request for arbitration concerns just a few of these items.

Federal regulations provide that a qualified applicant under the Public Assistance Program is entitled to the repair of a structure "so that it can perform the function for which it was being used *as well as it did immediately prior to the disaster*." 44 CFR § 206.226 (d)(1) (emphasis added). The buildings at the BWSD campuses were subjected to hurricane-force winds for a period that has seldom been experienced in modern times. The results, while not apparent at first, have begun to show. Roofs that corrode and leak, windows that rattle and fog, and siding that is still scratched and dented is readily apparent at these three campuses.

In each case, FEMA has either rejected the Subgrantee's request or proposed the limited replacement of those structural elements that show obvious physical damage. As a result, the school district's buildings do not function as they did immediately prior to the disaster. The Bay-Waveland School District should be granted the authority under the Public Assistance Program to completely repair their buildings in the manner outlined in this request and the supporting documentation.

Sincerely,

BAY ST. LOUIS-WAVELAND SCHOOL DISTRICT

Rebecca Ladner

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Superintendant

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